IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.630 OF 2005.

Santosh @ Dankya Subhash Gaikwad
res. at Subhash Nagar,
Yerawada, Pune. ..Petitioner

Versus

1. D.N.Jadhav,
   Commissioner of Police

2. The State of Maharashtra,

3. The Superintendent,
   Yerawada Central Prison,
   Pune ..Respondents

Mr.U.N.Tripathi for the petitioner

Mr.D.S.Mhaispurkar, APP for the State

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 20th Sept, 2005

JUDGMENT (PER S.R.SATHE, J)

1. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging the order of detention passed against him by the Respondent No.1, the Commissioner of Police, Pune on 17.11.2004 in exercise of the powers conferred by Section 3(1) of the Maharashtra Prevention of Dangerous activities of slum lords, boot leggers, drug Offenders and dangerous persons Act, 1981. (For the sake of

convenience, hereinafter referred to as "the said Act").

2. The order of detention is based on two Criminal cases and four in camera statements. One Vijay Keshav Gaikwad, resident of Yeravada, filed a complaint alleging that on 28.4.2004 at about 8.30 a.m. the petitioner entered his house and asked to provide liquor. When he refused, the petitioner abused him and assaulted him with sickle. On the basis of the said complaint the police registered C.R.No.149 of 2004 against the petitioner for the offences punishable under section 324, 323, 504 r/w. 34 of I.P.C. The petitioner was arrested in the said case. However, subsequently released on bail on 6.5.2004.

3. Similarly, one Balu Pachange, resident of Yeravada, filed a complaint against the petitioner that on 14.7.2004 when he was pasting some posters on the wall near Neeta Park, the petitioner asked him not to paste those posters at the said place and when the said person refused, the petitioner assaulted him with sharp instrument. On the basis of the said complaint, the Yeravada Police Station registered C.R.No.242 of 2004 against the petitioner for the offences punishable under section 324, 323, 504 r/w.34 of I.P.C. The

petitioner surrendered before the J.M.F.C. Court No.5 in connection with the said C.R. on 9.8.2004 and was subsequently released on bail. When police found that the petitioner who had in fact criminal background was repeatedly committing the offences punishable under Chapter 16 and or Chapter 17 of Indian Penal Code, they started confidential enquiries against the petitioner. However, they noticed that nobody was willing to come forward to give information as they were scared of the petitioner. However, when some of the persons were assured that the police would not disclose the identity of the witnesses, four persons showed willingness to give information and accordingly in camera statements of witnesses A, B, C and D were recorded. The statement of witness A was recorded on 12.8.2004 wherein he stated that on 8.8.2004 when he was proceeding on motorcycle after collecting dues, the petitioner and his associates forcibly stopped him on the public road and by giving threats at the point of knife they forcibly took out amount of Rs.1200/- from him. As the petitioner was armed with deadly weapons and had made a scene, the passers by got scared and nobody intervened. On the contrary, they ran away from the said place.

4. Witness B, who was having Wadapav Centre at

Yeravada also told police that the Petitioner and his associates frequently used to visit his wada pav centre and eat wadapav without bothering to pay for the same. On 11.4.2004 the petitioner and his associates ate wadapav and when the said witness demanded money, the petitioner took out kukri from his accomplice and at the point of said kukri told the said witness that they would not pay. On so saying they even over turned the tray of wada pav and gave abuses. Petitioner's associate extorted money from the cash box. As a result of the same, the customers and other shop keepers in the vicinity got afraid and they switched off the lights and put down the shutters.

5. The statement of witness C was recorded on 4.9.2004 wherein he narrated the incident dated 27.8.2004. It was informed that on that day the petitioner and his associates at the point of knife forcibly took away the amount of Rs.2700/- from the cash box and seeing the commotion at the said place the customers left the shop and the adjoining shopkeepers in the vicinity put down their shutters.

6. Witness D, in his statement recorded before police on 8.9.2004 narrated the incident dated 4.9.2004, wherein also he informed about the

petitioner's illegal activities and how the petitioner used to collect money forcibly from the shopkeepers and the residents in that locality at the point of lethal weapons, and how the shopkeepers used to put down their shutters whenever they used to get information about the entry of the petitioner in that locality.

7. In view of the above material collected by the police, they found that the petitioner was a dangerous person and it is necessary to prevent his criminal activities. Hence proposal was made to the Commissioner of Police, Pune for the detention of the petitioner under the said Act. The Respondent No.1, the Commissioner of Police, Pune, after verifying the above mentioned material that was placed before him and considering the previous history of the petitioner was subjectively satisfied that the petitioner is a dangerous person and in order to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, he passed the above mentioned order of detention against the petitioner.

8. Though, the Petitioner has raised several grounds in his petition, to challenge the above mentioned order of detention, the learned Advocate for the Petitioner has ultimately pressed into service only

one ground that is mentioned at clause 6(L), which runs as follows :

> "The Petitioner says and submits that the detaining authority has furnished various documents to the detenu in a compilation alongwith the grounds of detention. The documents at page No.34, 47, 64, 65 and 81 of the compilation purporting to be Medical Certificates and judicial orders granting bail to the detenu in C.R.No.149/2004 and C.R.No.242/2004 are supplied to the detenu. The Petitioner says and submits that the above mentioned documents are the vital documents in vernacular language, i.e. in Marathi and not the original documents in English. The Petitioner says and submits that it is clear and undisputed fact that the abovesaid five documents which were existence and were available with the sponsoring authority is called upon to disclose and explain to the satisfaction of this Hon'ble Court as to why the original documents in English Language are not placed before the detaining authority alongwith their translation. The Petitioner says and submits that non-placement of vital and original documents before the detaining authority also amounts to suppression of material. The detaining authority without going through and making any inquiry about original documents casually arrived at his satisfaction and passed the detention order in a mechanical manner. It is further pertinent to note and shocking that since the original documents were never placed before the detaining authority, it is clearly an after thought and a false averment made in para 13 of the affidavit in reply dt.4.7.2005 that the Marathi documents are the true and correct translation of their original. The satisfaction of the detaining authority vitiates for non-placement of original and vital documents to the detenu inspite of his request in his representation. Since the detenu was deprived from comparing with their original documents and make effective representation to the authorities. The order of detention is illegal and bad in law, liable to be quashed and set aside."

9. Shri Tripathi, learned Advocate for the Petitioner strenuously argued before us that in the instant case in all five documents including medical certificates and judicial orders granting bail to the detenu in C.R.No.139 of 2004 and 242 of 2004 were supplied to the detenu. The said documents were vital documents. The translation of the said documents in marathi was provided but the original documents were not supplied. As a result of the same, the valuable right of making an effective representation under Article 22(5) of the Constitution of India was vitiated. He therefore submitted that the order of detention shall have to be quashed and the petitioner has to be released. From the perusal of the record and in particular the affidavits filed by the Commissioner of Police on 4.7.2005 and 29.8.2005, it appears that he has given the explanation about the non supply of the documents called by the detenu. We find that there is no substance in the contention taken by the Respondents in that behalf. They ought to have furnished the original documents as well as its translation to the detenu, particularly when the detenu had demanded the original documents. It is needless to say that first two grounds of detention were based on C.R.No.149 of 2004 and C.R.No.242 of 2004. However, copies of the original documents in that behalf were not supplied to

the petitioner though asked for by him and as such his right to make an effective representation in respect of those first two grounds has been vitiated. Naturally order based on first two grounds is not sustainable.

10. Shri Tripathi, learned advocate for the petitioner vehemently argued before us that there is nothing to indicate that at the relevant time the original documents as well as marathi translation of the said documents were considered by the detaining authority. So, according to him there was non application of mind in passing the order of detention. He also submitted that once it is held that the order based on two C.R's is bad in law, then it has to be quashed in toto and the petitioner will have to be released and it is not necessary to find out whether the order is sustainable on other grounds, namely four in camera statements. As against this, Shri Mhaispurkar, learned APP argued before us that in view of Section 5A of the said Act, even if it is held that the order of detention based on first two grounds related to two CRs is not sustainable, the detention order cannot be quashed and the petitioner cannot be released as the order is sustainable on other grounds namely four in camera statements.

11. In order to substantiate his argument, the learned Advocate for the Petitioner has placed reliance on a case **S. Gurdip Singh Vs. Union of India reported in AIR 1981 SC 362** wherein their Lordships have observed :

> This Court has taken the view that on proper construction of Article 22(5) of the Constitution, the service of the grounds of detention on the detenu can be complete only if they are accompanied by the documents or material on which the order of detention is based; for then alone the detenu will be able to make an effective representation. In other words, if the documents which form the basis of the order of detention are not served on the detenu along with the grounds of detention, in the eye of law there will be no service of the grounds of detention and that the circumstance would vitiate his detention and make it void ab initio.

12. We have carefully gone through the above mentioned judgment of the Apex Court. Firstly, it must be noted that the facts of the said case and the facts of the case in hand are quite different. In that case when the grounds of detention were served on the petitioner they were not accompanied by the documents forming the basis thereof and as such it was held that the service of the grounds of detention on the detenu was not complete. Under the said circumstances the detenu was released. However, in the present case the grievance of the petitioner is only in respect of the five documents pertaining to two C.Rs means only on

first two grounds and not for the other grounds. Another important aspect which shall have to be mentioned in respect of above cited ruling is that the said decision is of the year 1981 when Section 5A was not inserted in the said Act. So, the authority mentioned above is of no help to the petitioner. For the same reasons the other cases i.e. **Smt. Icchudevi Choraria vs. Union of India 1980 SC 1983, Meherunissa Vs. State of Maharashtra (1981) 2 SCC 709, Yumnasingh Vs. State of Manipur (1982)3SCC18,** relied upon by the learned advocate for the petitioner are not applicable to the facts of the present case and the same are of no use to the petitioner. The learned Advocate has also placed reliance on a decision of this court in Criminal writ Petition No.1722 of 2002. From the perusal of the judgment of the said case it appears that point with regard to application of Section 5A of the said Act was not at all argued before the said Court and as the Court was of the view that it was a case of total non application of mind on the part of the detaining authority, the order of detention was quashed. So, the said decision is of no help to the present petitioner. Another case which is relied upon by the learned Advocate for the petitioner is **Kamleshkumar Patel vs. Union of India, 1995 (3) SCC 639.** On perusal of the said judgment, it appears that point with regard to

application of Section 5A of the said Act was not argued and considered in that case. Naturally, the said authority is also of no use in the instant case while deciding the issue as to whether the order of detention is sustainable on other grounds.

13. In order to decide the above mentioned issue it is necessary to see what Section 5A says (Introduced in the Act in 1988). It runs as folows:

> 5A. Where a person has been detained in pursuance of an order of detention under Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made seperately on each of such grounds and accordingly-
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> a Such order shall not be deemed to be invalid or inoperative merely because one of some of the grounds is or are -
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> i) Vague,
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> ii) Non existent,
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> iii) Not relevant,
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> iv) Not connected or not proximately connected with such person, or
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> v) Invalid for any other reasons whatsoever, and it is not, therefore, possible to hold that the State Government or and officer mentioned in such sub-section (2) of section 3 making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

b) The State Government or such officer making the order of detention shall be deemed to have made the order of detention under the said section 3 after being satisfied as provided in the section with reference to the remaining ground or grounds."

14. The bare reading of the above mentioned Section establishes that the Section in general and clause 5A(a)(v) in particular is meant to include within the sweep of the provision each and every variety of grounds of invalidity. The plain meaning of this provision is that even if one or more of the grounds fall on the ground of non supply of documents thereby infringing Article 22(5) of Constitution, the said infringement will not invalidate the entire order, if it can be sustained on the basis of remaining grounds, wherein the constitutional requirements of Article 22(5) are complied with. This has been so held by the Division bench of this Court in a case **Rajesh R. Khushalani v. Mahendra Prasad, Criminal Writ Petition No.1412 of 1991** with Criminal Writ Petition No.1448 of 1991 decided in April 1992. The same view has been reiterated by the Division Bench of this Court in **Prabhakar Menka Shetty vs. S. Ramamurthy, Commissioner of Police for Gr.Bombay & Ors. 1993 Cr.L.J., 1981.** In that case Their Lordships were in fact considering the provisions of Section 5A of the National Security Act which are parameteria with the

provisions of Section 5A of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug Offenders and Dangerous Persons Act, 1981. What is more to be noted is that in a case **Attorney General for India etc. v/s. Amratlal Prajivandas and Ors., 1995 Cri.L.J. 426,** which is relied upon by learned APP Shri Mhaispurkar, a Bench of nine Hon'ble Judges of the Apex Court has clearly held that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds, which means that each of such orders is an independent order. Therefore, when an order is supported by more than one ground, and one or more grounds are found to be vague or irrelevant, nevertheless the order can be justified on the remaining valid ground or grounds. The above observation of the Apex Court gives a death blow to the submission made by the learned Advocate for the Petitioner.

15. Shri Tripathi, learned Advocate for the Petitioner ingeniously argued before us that communication of the grounds of detention must be complete. This proposition is not disputed and cannot be disputed. According to him there is no question of application of Section 5A in the present case.

However, we do not agree with this submission. It is needless to say that when we are considering the present case under the said Act, all the provisions of the said act shall have to be taken into consideration. We have to consider the entire scheme of the Act. Once we accept the provisions of Section 5A and its true meaning as laid down by the Apex Court, then even in respect of communication, it has to be said that communication in respect of every ground, in other words communication in respect of every order must be complete. If it appears that the communication was lacking in respect of one of the grounds, in other words, in respect of one of the orders, then the order of detention based on the other grounds cannot be said to be illegal or invalid. Each ground has to be tested seperately and independently with reference to the facts and law applicable to that particular ground. Ultimately, in order to succeed in the petition and get the relief of quashing the order of detention, the petitioner has to show that particular procedural safe guard provided under the Act is not followed by the detaining authority and the said safe guard touches to the root of the matter, namely the detention itself. If it is so, then only it can be said that the order is invalid.

16. In the instant case, admittedly the order of detention was not based merely on first two grounds namely two Criminal cases, but it was also based on other four grounds namely four in camera statements. The learned Advocate for the Petitioner has not at all argued before us that there is any lacuna in other grounds based on four in camera statements. In other words, treating each ground as seperate and independent order, no fault has been pointed out in other orders. When such is the position, having regard to the provision of Section 5A of the said Act and the ratio laid down in Attorney General for India vs. Amratlal Prajivandas & Ors (Supra), we have absolutely no hesitation to hold that though the impugned order of detention is invalid on first two grounds based on two Criminal cases, the same cannot be said to be illegal, invalid or bad in law as it finds support from other four grounds based on in camera statements of witnesses. Consequently, there is no need to quash the same and release the petitioner.

15. In this view of the matter, the petition is dismissed.

. Rule is discharged.

(S.R.Sathe, J.) (S.B.Mhase, J.)